



STATE OF MICHIGAN

**Department of  
Human  
Services**

**Michigan Domestic Violence  
Prevention & Treatment Board**  
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**Revised Testimony on HB 5698 & HB 5701 (as introduced)**

by Mary Lovik, Staff Attorney, Michigan Domestic Violence Prevention & Treatment Board  
May 3, 2006

My testimony today provides an update on comments I presented on behalf of the Michigan Domestic Violence Prevention & Treatment Board at this committee's March 15, 2006 hearing on HB 5698 and 5701. Because the Board had not had an opportunity to consider these bills prior to the March 15 hearing, my comments at that time were based on the Board's past position on similar bills introduced during the 2003-2004 legislative session. I noted during my March 15 remarks that HB 5698 and 5701 have new features that were not present in the bills the Board considered last session, and that the Board would be taking up the current pending bills at its April 7 quarterly meeting.\*

At its meeting on April 7, the Board voted to oppose HB 5698 and 5701 as written, and authorized its staff members to express to this committee a number of concerns for victims of domestic violence that form the basis of its opposition. This revised testimony presents the Board's specific concerns with HB 5698 and 5701, as follows:

1. Some victims of domestic violence may be discouraged from claiming the exemption from the divorce effects education program created in HB 5698 by its requirement that law enforcement agencies be given access to the sworn statement requesting the exemption. Victims who are in the midst of divorce proceedings may have reasonable concerns about concurrent criminal justice interventions. For example, some may fear retaliatory violence from the abuser if criminal proceedings are initiated. Others may be apprehensive that prison time for the abuser will impede child support collection efforts. Still others may lack the emotional or financial resources to cope with a criminal proceeding that is prosecuted simultaneously with the divorce action.
2. Some victims of domestic violence may desire to participate voluntarily in the divorce effects education program. However, the questionnaire requirement in HB 5698 discourages them from doing so because it requires them to reveal potentially sensitive information that could trigger reprisals or other dangerous actions if disclosed to the abuse perpetrator. The bill contains no guidance as to how the information in the questionnaire will be used, and its confidentiality provisions are not adequate to address safety concerns. In particular, if the court can review the questionnaire, due process protections may require that it be given to both parties – including the abusive party.
3. The Board believes that contempt sanctions for unexcused failure to participate in the divorce effects education program in HB 5698 are too harsh. Such sanctions are inconsistent with the

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\* A copy of my March 15 testimony is attached for your convenience.

environment of cooperation that this bill seeks to promote, and may further tax scarce financial and emotional resources of the parties that could otherwise be used for the benefit of their children.

4. The Board is concerned that the provisions for modifying a parenting plan in new section 5e(2) may result in an abrogation of the current law standard for modifying child custody orders as set forth in MCL 722.27(1)(c). The Board believes that this provision should be clarified to preserve the current standard for modification of custody orders.
5. If HB 5701 is amended to make the filing of a parenting plan an option that parents can choose, the Board suggests that the bill be further amended to provide that failure to file a parenting plan is not a basis for making a finding against a parent on any of the statutory best interest factors in MCL 722.23. Such a provision would protect parties who have a legitimate reason for not filing a parenting plan.

In addition to the foregoing points, staff to the Board have identified two additional provisions in HB 5701 that raise safety concerns for victims of domestic violence and their children:

- The provision in section 5a(5) permitting the court to approve a parenting plan without naming either parent as legal or physical custodian of the child is potentially detrimental to the safety of children who are at risk of being kidnapped by a parent.
- Although alternative dispute resolution is not required for domestic violence victims in cases where a parenting plan is disputed (section 5c(2)), section 5c(3) nonetheless requires them to attend a mandatory settlement conference. Settlement conferences are another form of alternative dispute resolution that requires parties to meet in a common location to negotiate their differences. Like other forms of alternative dispute resolution, this setting creates opportunities for abuse and intimidation by giving the perpetrator of violence physical access to the victim. Moreover, the imbalance of power and control in a relationship involving domestic violence prevents victims from negotiating on equal footing with the perpetrator, so that they are not able to advocate for safe, fair parenting time provisions. Accordingly, this requirement undoes the protections afforded by the provision in section 5c(2) that exempts domestic violence victims from alternative dispute resolution.

On behalf of the Board, thank you for this opportunity to present its concerns.

**Testimony on HB 5698 & HB 5701 by Mary Lovik, Staff Attorney to  
Michigan Domestic Violence Prevention & Treatment Board  
March 15, 2006**

Good afternoon. Thank you for the opportunity to testify today. My name is Mary Lovik, and I am an attorney on the staff of the Michigan Domestic Violence Prevention & Treatment Board (MDVPTB). The Board is a legislatively-created body of seven members appointed by the Governor with the advice and consent of the Senate. The Board is served by staff members such as myself, who are administratively housed within the Department of Human Services. The Board's responsibilities include administering federal funding to private non-profit organizations that provide emergency shelter and other non-residential services to victims of domestic violence and their children. The Legislature has also given the Board the task of providing technical assistance to the Governor and the Legislature on domestic violence law and policy.

The Board has not considered the package of bills before this committee today, but it did offer its comments on bills similar to HB 5701 and 5698 that were introduced in the House of Representatives last session. The Board's past comments raised 4 concerns relevant to the bills before this committee today:

- HB 5701 does not provide for an emergency hearing prior to filing a parenting plan in cases where there is a threat of child abduction.
- HB 5701 makes parenting plans mandatory, not optional. Like all types of cooperative dispute resolution including mediation and joint settlement conferences, required parenting planning is generally impossible in cases where a domestic violence perpetrator exercises power and control over an intimate partners. If parenting plans were optional, parties for whom it was unworkable could self-select out of the system, conserving both party and court resources that would otherwise be used to determine who must and must not file a mandatory parenting plan
- The Board appreciates the fact the domestic violence victims are not required to participate in divorce effects education programs under HB 5698, but would advocate that domestic violence and its effects on parents and children be included as a component of the required curriculum for such programs.
- The definition of domestic violence in HB 5698 should be incorporated into HB 5701, to maintain consistency.

In closing, I observe that there are many new aspects of HB 5701 that the Board has not considered because they were not present in the bills the Board considered last session. Accordingly, I anticipate that the Board may have further comment on these bills at a later time.

Thank you for this opportunity to address the Board's concerns with the committee.

